

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 15-870V

Filed: June 9, 2017

NOT TO BE PUBLISHED

LEAH TYRELL,

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Petitioner,

*

v.

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Attorneys' Fees and Costs

SECRETARY OF HEALTH

*

AND HUMAN SERVICES,

*

*

Respondent.

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Howard Scott Gold, Gold Law Firm, LLC, Wellesley Hills, MA, for petitioner.

Voris Edward Johnson, U.S. Department of Justice, Washington, DC, for respondent.

DECISION ON ATTORNEYS' FEES AND COSTS¹

Hastings, Special Master:

On August 13, 2015, petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the "Vaccine Act"). Petitioner alleged that she suffered a reaction to her Measles-Mumps-Rubella ("MMR") vaccination administered on August 23, 2012. On May 9, 2017, I issued a decision awarding compensation to petitioner based on the parties' stipulation. (ECF No. 40.)

On May 21, 2017, petitioner filed a motion for attorneys' fees and costs. (ECF No. 44). Petitioner requests attorneys' fees in the amount of \$20,577.75 and attorneys' costs in the amount of \$7,922.34, for a total amount of \$28,500.09. (*Id.* at 8-9.) In

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post it on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

accordance with General Order #9, petitioner's counsel represents that petitioner incurred no out-of-pocket expenses. On May 24, 2017, respondent filed a response to petitioner's motion. (ECF No. 45).

In his response, respondent argues that "[n]either the Vaccine Act nor Vaccine Rule 13 contemplates any role for respondent in the resolution of a request by a petitioner for an award of attorneys' fees and costs." *Id.* at 1. Respondent adds, however, that he "is satisfied the statutory requirements for an award of attorneys' fees and costs are met in this case." *Id.* at 2. Respondent "respectfully recommends that the Chief Special Master exercise his discretion and determine a reasonable award for attorneys' fees and costs." *Id.* at 3.

I have reviewed the billing records submitted with petitioner's request. I determined that a single invoice for \$2.00 for medical records obtained from Rite Aid was included in this fee application in error.³ In my experience the request otherwise appears reasonable, and I find no cause to reduce the requested hours or rates.

The Vaccine Act permits an award of reasonable attorneys' fees and costs. § 15(e). Based on the reasonableness of petitioner's request, I **GRANT** petitioner's motion for attorneys' fees and costs in the reduced amount of \$28,498.09.

Accordingly, the undersigned awards the total of \$28,498.09⁴ as a lump sum in the form of a check jointly payable to petitioner and petitioner's counsel Howard Scott Gold, Esq.

The clerk of the court shall enter judgment in accordance herewith.⁵

IT IS SO ORDERED.

/s/ George L. Hastings, Jr.
George L. Hastings, Jr.
Special Master

³ No Rite Aid records were filed in this case, and the patient name listed on the invoice is that of another vaccine petitioner also represented by Mr. Gold.

⁴ This amount is intended to cover all legal expenses incurred in this matter. This award encompasses all charges by the attorney against a client, "advanced costs" as well as fees for legal services rendered. Furthermore, § 15(e)(3) prevents an attorney from charging or collecting fees (including costs) that would be in addition to the amount awarded herein. See *generally Beck v. Sec'y of Health & Human Servs.*, 924 F.2d 1029 (Fed. Cir.1991).

⁵ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.